UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

FEDERAL INSURANCE COMPANY a/s/o AAA MID-ATLANTIC, INC., **Plaintiff,** **v.** **AMERICAN HOME ASSURANCE COMPANY And NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA,** **Defendants.**	**Civil Action No. 1:07-cv-6422-VM** **NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA'S ANSWER AND AFFIRMATIVE DEFENSES**

Defendant National Union Fire Insurance Company of Pittsburgh, PA ("National Union") by its attorneys, Schwartz Simon Edelstein Celso & Kessler, LLC, as and for a Verified Answer and Affirmative Defenses to the Complaint of plaintiff Federal Insurance Company a/s/o AAA Mid-Atlantic, Inc., herein allege upon information and belief as follows:

AS TO THE INTRODUCTION

1. National Union denies the allegations in paragraph 1 of the Complaint insofar as it is alleged that plaintiff is entitled to declaratory relief and respectfully defer all questions of law to the determination of the Court.

AS TO THE PARTIES

2. National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2.

3. National Union neither admits nor denies the allegations of paragraph 3, as said allegations are not directed against National Union and National Union lacks knowledge or information sufficient to form a belief as to the truth thereof.

4. National Union admits the allegations in paragraph 4.

AS AND FOR A RESPONSE TO
THE COMPLAINT IN THE CANNON ACTION

5. National Union admits the existence of the underlying Cannon litigation Fourth Amended Complaint and Fifth Amended Complaint, but lacks knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 5.

6. National Union admits the existence of the underlying Cannon Complaint, the content of which is a matter of public record. National Union lacks knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 6.

7. National Union admits the existence of the underlying Cannon Complaint, the content of which is a matter of public record. National Union lacks knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 7.

8. National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8, except to admit that the documents annexed to the complaint as Exhibit B indicate that the plaintiff in the Cannon Action moved to amend his complaint to add a claim for punitive damages.

9. National Union admits the existence of the underlying Cannon litigation Fifth Amended Complaint and that the document annexed to the complaint to which National Union here responds contains language alleging entitlement to punitive damages.

10. National Union admits the existence of the underlying Cannon litigation Fifth Amended Complaint and that the document annexed to the complaint to which National Union

here responds contains the provisions referred to in paragraph 10. National Union otherwise lacks knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 10.

11. National Union neither admits nor denies the allegations in paragraph 11, and state that the allegations asserted in the Cannon Complaint and any amendments thereto speak for themselves.

12. National Union neither admits nor denies the allegations in paragraph 12, or the allegations asserted in the Cannon Complaint and any amendments thereto speak for themselves.

AS AND FOR A RESPONSE TO
THE INSURANCE POLICIES ISSUED TO AAAMA

A. The Federal Liability Policy

13. National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13.

14. National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14.

15. National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15.

B. The Federal Commercial Umbrella Policy

16. National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16.

17. National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17.

18. National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18.

19. National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19.

20. National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20.

AS AND FOR A RESPONSE TO THE INSURANCE POLICIES ISSUED TO AAA ON WHICH AAAMA IS AN ADDITIONAL INSURED

A. The American Home CGL Policy

21. With respect to the allegations contained in paragraph 21, National Union admits only that American Home issued Commercial General Liability policy No. GL 457-08-63 RA to AAA National for the policy period October 1, 2000, to October 1, 2001 (the "American Home policy"), admits the existence of all of the terms, conditions, definitions, limitations, exclusions, endorsements and other provisions of the American Home policy, and denies the allegations contained in this paragraph to the extent they are inconsistent therewith.

22. National Union denies the allegations in paragraph 22.

23. National Union denies the allegations in paragraph 23, insofar as it is alleged that AAAMA is an Additional Insured with respect to the Cannon Action.

24. With respect to the allegations contained in paragraph 24, National Union admits the existence of all of the terms, conditions, definitions, limitations, exclusions, endorsements and other provisions of the American Home policy, and denies the allegations contained in this paragraph to the extent they are inconsistent therewith.

B. The National Union Commercial Umbrella Policy

25. With respect to the allegations contained in paragraph 25, National Union admits only that National Union issued Commercial Umbrella policy No. BE 357-54-14 to AAA

National for the policy period October 1, 1998, to October 1, 2001 (the "National Union policy"), admit the existence of all of the terms, conditions, definitions, limitations, exclusions, endorsements and other provisions of the National Union policy, and denies the allegations contained in this paragraph to the extent they are inconsistent therewith.

26. With respect to the allegations contained in paragraph 26, National Union admits the existence of all of the terms, conditions, definitions, limitations, exclusions, endorsements and other provisions of the National Union policy, and denies the allegations contained in this paragraph to the extent they are inconsistent therewith.

27. With respect to the allegations contained in paragraph 24, National Union admits the existence of all of the terms, conditions, definitions, limitations, exclusions, endorsements and other provisions of the National Union policy, and denies the allegations contained in this paragraph to the extent they are inconsistent therewith.

28. National Union denies the allegations in paragraph 28.

29. With respect to the allegations contained in paragraph 29, National Union admits the existence of all of the terms, conditions, definitions, limitations, exclusions, endorsements and other provisions of the National Union policy, and denies the allegations contained in this paragraph to the extent they are inconsistent therewith.

30. With respect to the allegations contained in paragraph 30, National Union admits the existence of all of the terms, conditions, definitions, limitations, exclusions, endorsements and other provisions of the National Union policy, and denies the allegations contained in this paragraph to the extent they are inconsistent therewith.

31. With respect to the allegations contained in paragraph 30, National Union admits the existence of all of the terms, conditions, definitions, limitations, exclusions, endorsements

and other provisions of the National Union policy, and denies the allegations contained in this paragraph to the extent they are inconsistent therewith.

AS AND FOR A RESPONSE TO
COVERAGE WAS DULY DEMANDED BUT REFUSED
BY AMERICAN HOME AND NATIONAL UNION

32. With respect to the allegations contained in paragraph 32, National Union admits only that AAAMA and Federal demanded coverage for AAAMA with respect to the Cannon Action and that American Home and National Union have disclaimed coverage on grounds that the American Home policy and the National Union policy are not liable to AAAMA for the claims asserted against it in the Cannon Action, and denies the remaining allegations of this paragraph.

33. National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 33.

34. National Union lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 34.

35. National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 35.

36. National Union admits only that AAAMA and Federal demanded coverage on April 19, 2007 and April 26, 2007, for AAAMA with respect to the Cannon Action and that American Home and National Union have disclaimed coverage on grounds that the American Home policy and the National Union policy are not liable to AAAMA for the claims asserted against it in the Cannon Action and denies the remaining allegations of this paragraph.

37. With respect to the allegations contained in paragraph 37, National Union admits only that AAAMA and Federal demanded coverage for AAAMA with respect to the Cannon

Action and that American Home and National Union have disclaimed coverage on grounds that the American Home policy and the National Union policy are not liable to AAAMA for the claims asserted against it in the Cannon Action, and denies the remaining allegations of this paragraph.

38. National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38.

39. National Union denies the allegations in paragraph 39.

40. National Union admits that Mr. Warren Usdin of AIG Domestic Claims, Inc., the claims administrator for American Home and National Union disclaimed coverage on behalf of these defendants.

41. With respect to the allegations contained in paragraph 41, National Union admits only that the disclaimer letter was based, in part, on the "Additional Insured—Club Members" endorsement, refer to the letter itself for the best expression of its contents, and denies the remaining allegations contained in this paragraph.

42. National Union lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 42.

43. National Union denies the allegations in paragraph 43, insofar as they characterize the "Additional Insured—Club Members" endorsement to the American Home policy as "purported," and denies knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this paragraph.

44. With respect to the allegations contained in paragraph 44, National Union admits the existence and content of the disclaimer letter and denies the allegations contained in this paragraph that Exclusion g. has no application to the Cannon Action.

45. With respect to the allegations contained in paragraph 45, National Union admits only that the disclaimer letter identified AAAMA's failure to comply with the "Duties in the Event of Occurrence, Offense, Claim or Suit" provision of the American Home policy, and denies the remaining allegations of this paragraph.

46. With respect to the allegations contained in paragraph 46, National Union admits only that the disclaimer letter stated in sum and substance that AAAMA's alleged liability in the Cannon action was not based upon any AAA, Inc. activity or any activity performed by AAAMA for AAA, Inc. and denies the allegations of this paragraph to the extent they are inconsistent therewith.

47. With respect to the allegations contained in paragraph 47, National Union admits the existence and contents of the disclaimer letter and denies the allegations contained in this paragraph to the extent they are inconsistent therewith.

48. With respect to the allegations contained in paragraph 48, National Union admits the existence and contents of the disclaimer letter and denies the allegations in this paragraph to the extent they are inconsistent therewith.

49. With respect to the allegations contained in paragraph 49, National Union admits the existence and contents of the disclaimer letter and denies the allegations contained in this paragraph to the extent they are inconsistent therewith and insofar as it is alleged that Condition F is inapplicable.

50. National Union denies the allegations in paragraph 50.

51. With respect to the allegations contained in paragraph 51, National Union admits only that counsel for AAAMA and Federal issued letters dated May 16, 2007, and May 21, 2007, and denies the validity of the matters asserted therein except to denies knowledge or information

sufficient to form a belief as to the truth or falsity of the claim that the "Additional Insured—Club Members" endorsement was not part of the American Home policy provided to AAAMA's counsel. In addition, National Union denies that the "Additional Insured—Club Members" endorsement is not part of the American Home policy.

52. With respect to the allegations contained in paragraph 52, National Union admits only that counsel for AAAMA issued the letter dated May 16, 2007, and denies the validity of the matters asserted therein.

53. National Union denies the allegations in paragraph 53.

AS AND FOR A RESPONSE TO THE SETTLEMENT OF THE CLAIMS AGAINST AAAMA AND THE SUBSEQUENT CONCLUSION OF THE CANNON TRIAL

54. National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 54.

55. National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 55.

56. National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 56.

57. National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 57.

58. National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 58.

59. National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 59.

60. National Union denies the allegations in paragraph 60, insofar as it is alleged that these defendants were obligated to offer any monies in settlement on AAAMA's behalf.

61. National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 61.

62. National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 62.

63. National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 63, except to admit that their records reflect that a verdict was rendered in the Cannon Action on June 8, 2007.

64. With respect to the allegations contained in paragraph 64, National Union refers to the contents of the Verdict Sheet and denies the allegations contained in this paragraph to the extent they are inconsistent therewith.

65. With respect to the allegations contained in paragraph 65, National Union refers to the contents of the Verdict Sheet and denies the allegations contained in this paragraph to the extent they are inconsistent therewith.

66. With respect to the allegations contained in paragraph 66, National Union refers to the content of the Verdict Sheet and denies the allegations contained in this paragraph to the extent they are inconsistent therewith or the verdict rendered by the jury in the Cannon Action.

AS AND FOR AN ANSWER TO THE
FIRST CAUSE OF ACTION

67. As to paragraph 67, National Union repeats, reiterates and realleges each and every response to paragraphs 1 through 66, of the Complaint as if set forth fully herein.

68. National Union denies the allegations in paragraph 68.

69. National Union denies the allegations in paragraph 69.

70. National Union denies the allegations in paragraph 70 .

71. National Union denies the allegations in paragraph 71.

72. National Union denies the allegations in paragraph 72.

73. National Union denies the allegations in paragraph 73.

AS AND FOR AN ANSWER TO THE
SECOND CAUSE OF ACTION

74. As to paragraph 74, National Union repeats, reiterates and realleges each and every response to paragraphs 1 through 73 of the Complaint as if set forth fully herein.

75. National Union denies the allegations in paragraph 75.

76. National Union denies the allegations in paragraph 76.

77. National Union denies the allegations in paragraph 77 .

78. National Union denies the allegations in paragraph 78.

AS AND FOR AN ANSWER TO THE
THIRD CAUSE OF ACTION

79. As to paragraph 79, National Union repeats, reiterates and realleges each and every response to paragraphs 1 through 78, of the Complaint as if set forth fully herein.

80. National Union denies the allegations in paragraph 80.

81. National Union denies the allegations in paragraph 81.

82. National Union denies the allegations in paragraph 82 .

83. National Union denies the allegations in paragraph 83.

84. National Union denies the allegations in paragraph 84 .

85. National Union denies the allegations in paragraph 85.

86. National Union denies the allegations in paragraph 86.

AS AND FOR AN ANSWER TO THE
FOURTH CAUSE OF ACTION

87. As to paragraph 87, National Union repeats, reiterates and realleges each and every response to paragraphs 1 through 86, of the Complaint as if set forth fully herein.

88. National Union denies the allegations in paragraph 88.

89. National Union denies the allegations in paragraph 89.

90. National Union denies the allegations in paragraph 90.

AS AND FOR AN ANSWER TO THE
FIFTH CAUSE OF ACTION

91. As to paragraph 91, National Union repeats, reiterates and realleges each and every response to paragraphs 1 through 90 of the Complaint as if set forth fully herein.

92. National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 92.

93. National Union denies the allegations in paragraph 93.

94. National Union denies the allegations in paragraph 94.

AS AND FOR AN ANSWER TO THE
SIXTH CAUSE OF ACTION

95. As to paragraph 95, National Union repeats, reiterates and realleges each and every response to paragraphs 1 through 94, of the Complaint as if set forth fully herein.

96. National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 96.

97. National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 97.

98. National Union denies the allegations in paragraph 98.

99. National Union denies the allegations in paragraph 99.

AFFIRMATIVE DEFENSES

National Union asserts the following affirmative defenses to the Complaint or to the coverage sought by plaintiff:

FIRST AFFIRMATIVE DEFENSE

The complaint fails to state facts upon which relief can be granted and fails to state a claim or cause of action against National Union.

SECOND AFFIRMATIVE DEFENSE

The complaint and claims asserted by Federal are barred by the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

The complaint and claims asserted by Federal are barred by the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

The complaint and claims asserted by Federal are barred by the doctrine of waiver and/or the doctrine of estoppel.

FIFTH AFFIRMATIVE DEFENSE

The claims asserted by Federal are barred by its failure to mitigate damages.

SIXTH AFFIRMATIVE DEFENSE

National Union is not obligated to defend or pay on behalf of AAAMA for the claims asserted against it in the Cannon Action.

SEVENTH AFFIRMATIVE DEFENSE

AAAMA is not an insured or additional insured under any insurance policy issued by American Home and/or National Union to AAA National with respect to the losses allegedly incurred or any other matter alleged in the Cannon Action.

EIGHTH AFFIRMATIVE DEFENSE

The claims asserted against AAAMA in the Cannon Action do not fall within the scope of insurance provided by the policies issued by American Home and/or National Union.

NINETH AFFIRMATIVE DEFENSE

The claims asserted against AAAMA in the Cannon Action do not constitute liability for the activities of American Home's Named Insured or activities AAAMA performed on behalf of American Home's Named Insured within the meaning of the "Additional Insured—Club Members" endorsement to the American Home policy.

TENTH AFFIRMATIVE DEFENSE

The claims asserted against AAAMA in the Cannon Action are barred, in whole or in part, by exclusion "g. Aircraft, Auto Or Watercraft," of the American Home policy which precludes coverage for "'Bodily Injury' or 'property damage' arising out of the ownership, maintenance, use or entrustment to others of any aircraft, 'auto' or watercraft owned or operated by or rented or loaned to any insured."

ELEVENTH AFFIRMATIVE DEFENSE

The "Additional Insured – Designated Person or Organization" endorsement (CG2026 11 85) to the American Home policy is not subject to any amendatory endorsements pertaining to Members Clubs of AAA or in lieu of the requirement of a written contract.

TWELFTH AFFIRMATIVE DEFENSE

National Union denies that the "Endorsement #0004" which purports to amend Additional Insured-Designated Person or Organization (CG 20 26 11 85) forms a part of the American Home policy.

THIRTEENTH AFFIRMATIVE DEFENSE

"Endorsement #0004" which purports to amend Additional Insured-Designated Person or Organization (CG 20 26 11 85) is not applicable to the claims asserted against AAAMA in the Cannon Action.

FOURTEENTH AFFIRMATIVE DEFENSE

National Union did not intentionally relinquish any right to rely upon all of the terms, conditions, definitions, limitations, exclusions and other provisions of the National Union policy.

FIFTEENTH AFFIRMATIVE DEFENSE

The complaint and claims asserted by Federal are barred for failure to name indispensable and necessary parties.

SIXTEENTH AFFIRMATIVE DEFENSE

AAAMA has not incurred a legal liability insured for by any insurance policy issued by National Union.

SEVENTEENTH AFFIRMATIVE DEFENSE

The policy issued by National Union does not insure for non-pecuniary loss, fines, injunctive or equitable relief.

EIGHTEENTH AFFIRMATIVE DEFENSE

Federal's claims are barred in whole or in part by the terms, conditions, exclusions and provisions contained in the American Home and National Union policies.

NINETEENTH AFFIRMATIVE DEFENSE

AAAMA's claims rise, to the extent any such exist, no higher than those of National Union's Named Insured, and National Union reserves the right to assert any and all applicable terms, conditions, definitions, limitations, exclusions and other provisions of the American Home and National Union policy.

TWENTIETH AFFIRMATIVE DEFENSE

The availability of insurance under the policies issued by National Union is governed by, and subject to, all of the terms, conditions, definitions, limitations, exclusions and other provisions contained therein.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Insurance under the National Union policy issued is governed by the "other insurance" clauses contained in such policies.

TWENTY-SECOND AFFIRMATIVE DEFENSE

The claims at issue do not give rise to a justiciable case or controversy with respect to the National Union policy.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Plaintiff is not entitled to money damages, attorney's fees and costs of suit.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

While denying any insurance obligation to AAAMA under the National Union policy, any such obligation is barred because AAAMA failed to comply with one or more conditions precedent to insurance under the policies.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

While denying any insurance obligation with respect to the National Union policy, any such obligation is barred because AAAMA failed to comply with one or more conditions subsequent to insurance under the policy.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

While denying any insurance obligation under the National Union policy, any such obligation is barred because AAAMA failed to give adequate and timely notice.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

National Union has suffered a substantial likelihood of appreciable prejudice due to AAAMA's failure to give adequate and timely notice.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

While denying any insurance obligation under the National Union policy, any such obligation is barred because AAAMA failed to cooperate with National Union.

TWENTY-NINETH AFFIRMATIVE DEFENSE

National Union has suffered a substantial likelihood of appreciable prejudice due to AAAMA's failure to cooperate as required by the terms of the National Union policy.

THIRTIETH AFFIRMATIVE DEFENSE

While denying any insurance obligation under the National Union policy, any such obligation is barred because AAAMA voluntarily assumed certain obligations in violation of the terms of the policy.

THIRTY-FIRST AFFIRMATIVE DEFENSE

National Union has suffered a substantial likelihood of appreciable prejudice due to AAAMA's voluntary assumption of certain obligations.

THIRTY-SECOND AFFIRMATIVE DEFENSE

Any insurance obligation under the policy issued by National Union is subject to applicable deductibles, self-insured retention and the applicable limit of insurance.

THIRTY-THIRD AFFIRMATIVE DEFENSE

The complaint is not drafted with sufficient particularity to permit National Union to raise all appropriate defenses and, therefore, National Union reserves the right to amend and/or supplement this Answer with additional separate defenses.

WHEREFORE, National Union respectfully requests that judgment be entered in its favor, and that the Court assess such costs and other relief as it deems appropriate under the circumstances.

Dated: New York, New York
July 20, 2007

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